



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable O. Woodrow Laughlin  
County Attorney  
Jim Wells County  
Alice, Texas

Dear Sir:

Opinion No. O-4726

Re: Can a person who attained the age of twenty-one years during the year 1941 and before the first day of February, 1942, vote in the July 25th primary election without first having obtained from the Tax Assessor-Collector a certificate of exemption, and a related question.

Your letter of July 21, 1942 requesting the opinion of this Department on the questions stated therein reads as follows:

"I have read and studied your Opinions Numbered O-1741a and O-2145 and I submit herewith for your specific ruling the following questions, to-wit:

"(1) Can a person who attained the age of 21 years during the year 1941 and before the first day of February, 1942, vote in the July 25th Primary Election without first having obtained from the tax collector a certificate of exemption?

"(2) Can a person attaining the age of 21 years after the 1st day of February, 1942 and before the July 25th Primary Election, vote in such election without having obtained a certificate of exemption prior to February 1, 1942?

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"For the purpose of this opinion, Jim Wells County has no city of more than 10,000 inhabitants or more.

"I deem it unnecessary to quote Articles 2968a and 2969 inasmuch as they are quoted in full in the above two opinions dated June 29, 1940, nor should I attempt to quote from any of the cases cited in those opinions because the same should be superfluous. I merely wish to call your attention to Article 2955 as amended in 1941, 47th Legislature, and reads in part as follows:

"Every person subject to none of the foregoing disqualifications who shall have attained the age of twenty-one (21) years and who shall be a citizen of the United States, and who shall have resided in this State one year next preceding an election, and the last six (6) months within the district or county in which he or she offers to vote, shall be deemed a qualified elector. The electors living in an unorganized county may vote at an election precinct in the county to which such county is attached for judicial purposes; provided that any voter who is subject to pay a poll tax under the laws of this State, shall have paid said tax before offering to vote at any election in this State and holds a receipt showing that said poll tax was paid before the first day of February next preceding such election; and, if said voter is exempt from paying a poll tax and resides in a city of ten thousand (10,000) inhabitants or more, he or she must procure a certificate showing his or her exemptions, as required by this title.

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"Inasmuch as this statute is later than your opinions I am wondering if this has any effect on the present law. I feel that under this late statute that both questions above submitted should be answered in the affirmative. I would like very much to have your opinion on this matter not later than Thursday or Friday of this week and if a communication can not reach me in time, please wire me collect."

Article 2968a, Vernon's Annotated Civil Statutes, reads in part as follows:

"Every person not subject to the disqualifications set out in Article 2954, Revised Civil Statutes of 1925, who does not reside in a city of 10,000 inhabitants or more, and who is exempt from the payment of a poll tax by reason of the fact that he or she has not yet reached the age of twenty-one years on the first day of January preceding its levy, or who is exempt from the payment of a poll tax because he or she was not a resident of the State on the first day of January preceding its levy, but who shall have since become eligible to vote by reason of length of residence or age, shall, on or before the thirty-first day of January of the year in which he or she offers to vote, obtain from the Assessor and Collector of Taxes for the county of his or her residence a certificate of exemption from the payment of a poll tax, and no such person who has failed or refused to obtain such certificate of exemption from the payment of a poll tax shall be allowed to vote.  
(Emphasis ours)

". . . ."

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The Beaumont and the Austin Courts of Civil Appeals have held in recent decisions that under the terms and provisions of Article 2968a all persons, with certain exceptions, not subject to the payment of poll tax because of non-age, who have become twenty-one years of age after January 1st and before the day of the following election, may not vote unless they obtain a certificate of exemption on or before January 31st of the year in which they offer to vote. *Rogers vs. Smith, et al.*, 119 S. W. (2) 678, *Clark vs. Stubbs*, 131 S. W. (2) 663.

In the case of *Rogers vs. Smith, et al.*, supra, the Beaumont Court of Civil Appeals held that:

"In an election contest, the refusal on the part of the District Court hearing same to count a vote by a party who became twenty-one years of age before election held on April 3, 1937, and subsequent to January 1, 1937 was not error, where such voter failed to obtain from the Tax Assessor and Collector a certificate of exemption, and such person was not a qualified voter."

As authority for this holding, the Court cited Article 2968a, Vernon's Annotated Civil Statutes, Acts 1935, Forty-fourth Legislature, page 686, Chap. 292, Sec. 1.

The holding of the Austin Court of Civil Appeals in the case of *Clark vs. Stubbs*, supra, is the same as that of the Beaumont Court of Civil Appeals in the case of *Rogers vs. Smith, et al.* We quote from the opinion as follows: (at page 666)

"Appellee challenged the votes of Nell Rose Morrissey, Jess Dyer, Lillie Gibson, Wilbur Herwig, Louise Wilderbrush, Mrs. Bowman Bazil, Clinton

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Jacobs, and Willis Blackburn, because each of them became twenty-one years of age after January, 1936, and prior to November 1936, and under the governing statute, therefore, they were not entitled to vote without an exemption certificate. Article 2968a, Vernon's Annotated Civil Statutes, Acts 1935, Forty-fourth Legislature, page 868, Chap. 292, Sec. 1, provides that each of the voters in question was required to obtain the exemption certificate before he or she was entitled to vote. Neither of them obtained such certificate. The statute is mandatory and these voters were not qualified to vote at the election, and the trial court correctly excluded all such votes."

It was stated in our opinion No. 0-1741a that:

"The cases of Clark vs. Stubbs and Rogers vs. Smith, supra, specifically hold that those persons exempt from the payment of the poll tax by reason of non-age and residing in a city of less than 10,000 inhabitants must obtain exemption certificates on or before the 31st day of January of the year in which they offer to vote."

We have carefully studied Article 2955, Vernon's Annotated Civil Statutes, as amended by the Forty-seventh Legislature, 1941, in connection with the facts stated in your request and have reached the conclusion that said Article is not applicable to the questions under consideration.

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In view of the foregoing authorities we respectfully answer both of your questions in the negative.

This opinion does not in any way attempt to construe Article 2955, supra, other than as stated above.

Trusting that the foregoing fully answers your inquiry, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*  
Ardell Williams  
Assistant

AW:MBH

APPROVED JUL 24, 1942

*Gerald B. Mann*  
ATTORNEY GENERAL OF TEXAS

